

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GENE ALLEN HERROLD,	:	
Petitioner,	:	
v.	:	Civil Action No. 05-205J
TRACY JOHNS, WARDEN,	:	
F.C.I. LORETTO,	:	
Respondent	:	

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on February 15, 2006, docket no. 5, recommending that the petition be transferred to the Court of Appeals for the Third Circuit as an application for authorization to file a successive motion to vacate, or summarily dismissed.

The petitioner was notified that pursuant to 28 U.S.C. § 636(b)(1), he had ten days to serve and file written objections to the Report and Recommendation. Petitioner filed objections to both recommendations on February 28, 2006, docket no. 6, but the objections are meritless.

After de novo review of the record of this matter, together with the Report and Recommendation and the timely objections thereto, the following order is entered:

AND NOW, this 2nd day of March, 2006, it is

ORDERED that the petitioner's petition for a writ of habeas corpus is denied without prejudice to filing a successive motion to vacate in the appropriate court if authorized, and the Clerk is directed to forward the petition to the Court of Appeals for the Third Circuit as an application for authorization to file a successive motion to vacate. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

cc: Gene Allen Herrold #06144-067
F.C.I. Loretto
P.O. Box 1000
Loretto, PA 15940